

**STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee

Supreme Court No. 126727

vs.

DAVID MICHAEL PERKINS.
Defendant- Appellant

Court of Appeals No. 243412
Lower Court No. 02-0371

**APPELLEE'S BRIEF ON APPEAL
ORAL ARGUMENT REQUESTED**

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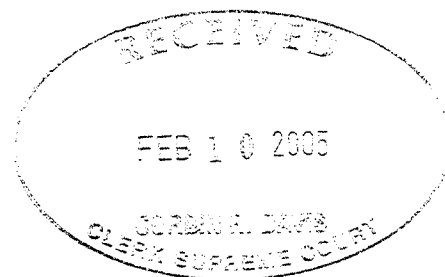


Table of Contents

Table of Authorities	ii
Counterstatement of Jurisdiction	1
Counterstatement of Questions	2
Counterstatement of Facts	3
 I. MCL 750.224f defines <i>specified felony</i> to include all offenses in which by their nature involve a substantial risk of the use of force. <i>Larceny from the person</i> by its nature involves the risk to use force if the victim does not submit and resists theft. <i>Larceny from the person</i> is a <i>specified felony</i> as defined in MCL 750.224f	4
 Standard of Review	4
Discussion	4
 II. A verdict must be based upon evidence which, in the light most favorable to the prosecution, allows a reasonable person to find guilt beyond a reasonable doubt and must include proof on all of the elements of the crime but does not require negation of facts that defendant has the burden of establishing. In this case, the evidence established that defendant was a felon and that he possessed a gun at the time of this incident; and further, defendant did establish not that he was exempted from the prohibition against a felon possessing a gun. This evidence was sufficient to allow the trier of fact to reasonably find defendant guilty of being a Felon in Possession of a Firearm.	11
 Standard of Review	11
Discussion	11
Relief	21

TABLE OF AUTHORITIES

FEDERAL CASES

United States v. De Jesus, 984 F.2d 21 (1st Cir.1993)	7
United States v. Hawkins, 69 F.3d 11 (5th Cir.1995), cert. denied, 516 U.S. 1163, 116 S.Ct. 1053, 134 L.Ed.2d 198 (1996)	7

STATE CASES

Baird v Maher, 316 Mich. 657 (1947)	9
Hall v People, 39 Mich. 717 (1878)	8
People Gilleylen, 31 Mich. App. 416 (1971)	17
People v. Adams, 128 Mich. App. 25	7
People v Carey, 36 Mich. App. 640 (1971)	17
People v Chamblis, 395 Mich. 408 (1975)	8
People v Clark,	

85 Mich. App. 96 (1978)	8
People v Eberhardt, 205 Mich. App. 587 (1994)	6
People v Frank Johnson, 58 Mich. App. 1 (1975)	8
People v Gould, 384 Mich. 71 (1970)	8, 16
People v Hampton, 407 Mich. 354 (1979)	11
People v Henderson, 391 Mich. 613 (1974)	16
People v Howard, 50 Mich. 390 (1883)	8
People v Jiminez, 27 Mich. App. 633 (1970)	17
People v Shirley Johnson, 96 Mich. App. 84 (1980)	14
People v. Lee, 243 Mich. App. 163	7
People v MacPherson, 323 Mich., 438 (1949)	14
People v Morey, 461 Mich. 325 (1999)	13, 16, 17, 18

People v Peganaue, 447 Mich. 278 (1994)	12,19
People v. Perkins, 262 Mich. App. 267 (2004)	3
People Petrella, 424 Mich. 221 (1985)	13
People v Schrader, 10 Mich. App. 211	15, 16
People v Wakeford, 418 Mich. 95 (1983)	6

STATUTES

MCL 28.424.	17
MCL 750.224f	3,4, 18
MCL 750.224f(1)	18
MCL 750.224f(2)(b).	17
MCL 750.227b	3
MCL 750.224f(6)	5,9
MCL 750.227	18
MCL 750.356	6
MCL 750.357	6
MCL 750.411i	9
MCL 750.520e	10
MCL 776.20	13, 16,17,18
MCL 768.21a	12

COUNTERSTATEMENT OF JURISDICTION

The People accept defendant's statement of jurisdiction.

COUNTERSTATEMENT OF QUESTION PRESENTED

- I. MCL 750.224f defines *specified felony* to include all offenses which by their nature involve a substantial risk of the use of force. *Larceny from the person* by its nature involves the risk to use force if the victim does not submit and resists theft. Is *Larceny from the person* a *specified felony* as defined in MCL 750.224f?

The People answer: "Yes."

Defendant answers: "No."

The Court of Appeals answered: "Yes."

- II. A verdict must be based upon evidence which, in the light most favorable to the prosecution, allows a reasonable person to find guilt beyond a reasonable doubt and must include proof on all of the elements of the crime but does not require negation of facts that defendant has the burden of establishing. In this case, the evidence established that defendant was a felon and that he possessed a gun at the time of this incident; and further, defendant did establish not that he was exempted from the prohibition against a felon possessing a gun. Was this evidence sufficient to allow the trier of fact to reasonably find defendant guilty of being a Felon in Possession of a Firearm?

The People answer: "Yes."

Defendant answers: "No."

The Court of Appeals answered: "Yes."

COUNTERSTATEMENT OF FACTS

Defendant was convicted in a trial without a jury of Felon in Possession of a Firearm¹ and Possession of a Firearm in the Commission of a Felony² (8a).³

At trial, the People established that defendant had been convicted in 1977 of Larceny from Person (35a) and that he possessed a firearm on October 19, 2001 as was charged (14a). Defendant admitted on cross-examination that he possessed the gun in question (42a) and that he had been convicted of Larceny from the Person (41a).

Defendant presented no evidence that his right to possess a firearm had been restored.

The Court of Appeals affirmed defendant's conviction.⁴

Additionally, the People will accept Defendant's Statement of Facts.

¹ MCL 750.224f.

² MCL 750.227b.

³ All references within parentheses are to pages of Defendant-Appellant's Appendix.

⁴ *People v. Perkins*, 262 Mich App 267 (2004).

I.

MCL 750.224f defines *specified felony* to include all offenses which by their nature involve a substantial risk of the use of force. *Larceny from the person* by its nature involves the risk to use force if the victim does not submit and resists theft . *Larceny from the person* is a *specified felony* as defined in MCL 750.224f

Standard of Review

The People accept that this claim is reviewed de novo.

Discussion

Defendant claims that insufficient evidence was produced to support his conviction of Felon in Possession of a Firearm⁵ as the underlying felony upon which his conviction was based, Larceny from the Person, was not a **specified felony**.

In this case, defendant was charged with the offense of being a Felon in Possession of a Firearm (14a).

MCL 750.224f which defines the offense of Felon in Possession of a Firearm provides in parts as follows:

(2) A person convicted of a **specified felony** shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until all of the following circumstances exist:

(a) The expiration of 5 years after all of the following circumstances exist:

(i) The person has paid all fines imposed for the violation.

(ii) The person has served all terms of imprisonment imposed for the violation.

⁵ MCL 750.224f.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation.

(b) The person's right to possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm has been restored pursuant to section 4 of Act No. 372 of the Public Acts of 1927, being section 28.424 of the Michigan Compiled Laws. (Emphasis added).

Further **specified felony** is defined in the following manner:

As used in subsection (2), "**specified felony**" means a felony in which 1 or more of the following circumstances exist:

(i) An element of that felony is the use, attempted use, or threatened use of physical force against the person or property of another, or that **by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.**⁶ (Emphasis Added).

Here, the evidence established that defendant possessed a firearm (22a, 42a) and that defendant had been convicted of Larceny from the Person (35a,50a). Defendant presented no evidence that the Concealed Weapon's Board of the county in which he lived had restore his rights as is required by MCL 750.224f(2)(b).

On appeal, defendant claimed that this evidence was insufficient to support his conviction as Larceny from the Person is not a **specified felony**.

The People agree with defendant and the Court of Appeals that Larceny from the Person does not involve use, attempted use or threatened use of force. However, this offense does involve the substantial risk that physical force against another person will be used and thereby is included within the definition of **specified felony**.

⁶ MCL 750.224f(6).

Contrary to defendant's assertions, Larceny from the Person is a crime recognized by the Legislature as involving a risk of physical harm to the victims.

The general larceny statutes provide for increasing penalties based upon the value of the property stolen. If the value is less than \$200, then the violation is a 93-day misdemeanor. If the value of the stolen property exceeds \$200 but is less than \$1,000, then the violation is a 1-year misdemeanor. Only when the value exceeds \$1,000 does the violation become a felony, and penalty is a maximum of 5 years unless the value of the property exceeds \$20,000.⁷

On the other hand, Larceny from the Person has a maximum penalty of 10 years without the necessity of proving value.⁸ In fact, the value of the property taken in a case involving the charge of Larceny from the Person will most times be less than \$200 and almost always be less than \$1,000 as persons do not have that amount of money or property with them, yet the penalty for such a crime is tenfold or more than in case involving the theft of property of the same value which was not taken from the person of the victim. The Legislature in creating this statute recognized that Larceny from the Person's relationship to the robbery statutes,⁹ and like robbery the gravamen of Larceny from the Person is that the theft of the property is from the person of the victim which has the potential for physical harm to the victims¹⁰ and as such is crime which by its definition involves the risk of the use of force.

Here, the Court of Appeals in addressing this claim adopted the People's position and specifically stated the following:

⁷ MCL 750.356.

⁸ MCL 750.357.

⁹ *People v Eberhardt*, 205 Mich App 587, 590-591 (1994).

¹⁰ *People v Wakeford*, 418 Mich 95 (1983).

Clearly, the offense of larceny from a person does not involve an element of "the use, attempted use, or threatened use of physical force against the person or property of another." Indeed, the lack of force or violence distinguishes larceny from a person from the offense of robbery. See *People v. Lee*, 243 Mich.App 163, 188; 622 NW2d 71 (2000), *People v. Adams*, 128 Mich.App 25, 30; 339 NW2d 687 (1983), and cases cited in those opinions. Nevertheless, the offense of larceny from a person is separated from other larceny offenses because it is committed in the immediate presence of another person. *Adams, supra* at 32. **The "[l]egislature decided that larceny from a person presents a social problem separate and apart from simple larceny." *Id.* Specifically, "the invasion of the person or immediate presence of the victim." *Id.*** Because a person whose property is stolen from his presence may take steps to retain possession, and the offender may react violently, **we conclude that the offense of larceny from a person, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. "** MCL 750.224f(6)(i). We therefore hold that larceny from a person is a **specified felony** within the meaning of MCL 750.224f. **(Emphasis added).**

This view is limited to this appellate decision. As defendant noted in his brief, this view of Larceny from the Person has also been adopted in the Federal system¹¹ in the context of scoring sentencing guidelines. Specifically, one court stated the following:

We think larceny from the person is a crime that creates a substantial risk of physical harm to another. As explained above, Michigan law interprets "from the person" narrowly to require that the property be taken from the possession of the victim or be taken from within the immediate presence or area of control of the victim. This is clearly the type of situation that could result in violence. Any person falling victim to a crime involving such an invasion of personal space would likely resist or defend in a manner that could lead to immediate violence. Whether or not violence or harm actually results in any given instance is not relevant.

¹¹ *e.g. United States v. Hawkins*, 69 F.3d 11 (5th Cir.1995), cert. denied, 516 U.S. 1163, 116 S.Ct. 1053, 134 L.Ed.2d 198 (1996); *United States v. De Jesus*, 984 F.2d 21 (1st Cir.1993).

* * * * *

The Sentencing Guidelines include within the definition of crime of violence any offense creating "a serious *potential* risk of physical injury." (Emphasis added). **We can think of no situation in which larceny from the person could occur without presenting a serious potential risk of physical injury. Under the categorical approach, we will not inquire into whether or not such physical injury actually occurred in the case at bar. (Emphasis added)**

Further this analysis adopted by various courts is not arbitrary but reflects the factual situations in which this offense is committed. Specifically, Larceny from the Person is a statutory crime which closed the loophole when insufficient proof is adduced that force or the threat of force was used to obtain the money so that robbery cannot be established yet property was taken from the person of the victims. However, when such force is not needed to complete a theft from the person, the perpetrator is often larger, quicker, stronger, or more numerous than the victim(s). Thus Larceny from the Person while not confined to particular factual circumstances are most often committed against the elderly, the young, the weak, or the incapacitated. The snatching of a purse from a female shopper,¹² the theft of an incapacitated person's wallet or purse¹³ or the taking of a property by a more numerous group of stronger individuals¹⁴ are the more frequent scenarios involving this offense. In all of these scenarios, the common thread is that the use of force in this particular instance is unnecessary. However, because force may have used contemporaneously or the perpetrators may be armed a substantial risks exists that force may be used in this offense. The only fact which precludes this use of force is the total

¹² *People v Howard*, 50 Mich 390 (1883); *People v Frank Johnson*, 58 Mich App 1 (1975).

¹³ *People v Chamblis*, 395 Mich 408 (1975); *Hall v People*, 39 Mich 717 (1878)

¹⁴ *People v Clark*, 85 Mich App 96, 99 (1978); *People v Gould*, 384 Mich 71 (1970).

submission and lack of resistance to the theft by the victim. In every case in which the offense of Larceny from the Person is established, the thief has confronted and taken property from the person of that victim. It is implicit that the such perpetrators would in a majority of circumstances use the force necessary to effectuate their plan if the victim resisted, and if resisted, it is unreasonable to infer that the perpetrator would simply abandon his plan. Thus as both federal and Michigan courts have found, a substantial risk of the use of physical force exists with commission of Larceny from the Person.

Further, as a matter of statutory construction, the Legislature is presumed to have given meaning to all of the terms used.¹⁵ In defining specified felony, all homicides, assaults, robberies and most sexual conduct offenses are included within the proscription concerning the use or attempted use of force. The Legislature could have been content within the scope being limited to such offenses but instead sought to include other offenses which contained the risk of the use of force. However, the Legislature consciously included the phrase “**by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense**”¹⁶ in defining the term **specified felony**. Therefore crimes in which force are included within this definition.

The legislative history (46a-49a) included by defendant is unnecessary as the statute is clear and is patterned after a similar statutes which have been interpreted consistent with the People’s position. Further, defendant concedes that Aggravated Stalking¹⁷ and Criminal Sexual

¹⁵ *Baird v Maher*, 316 Mich 657 (1947).

¹⁶ MCL 750.224f(6).

¹⁷ MCL 750.411i.

Conduct 4th Degree¹⁸ would be offenses included within the definition of specified felony, Larceny from the Person by involving the theft of property from the person of the victim by involving an even greater risk of the use of force than these offenses would likewise come within that definition.

The Court of Appeals holding that Larceny from the Person is a specified felony should be affirmed.

¹⁸ MCL 750.520e.

II.

A verdict must be based upon evidence which, in the light most favorable to the prosecution, allows a reasonable person to find guilt beyond a reasonable doubt and must include proof on all of the elements of the crime but does not require negation of facts that defendant has the burden of establishing. In this case, the evidence established that defendant was a felon and that he possessed a gun at the time of this incident; and further, defendant did establish not that he was exempted from the prohibition against a felon possessing a gun. This evidence was sufficient to allow the trier of fact to reasonably find defendant guilty of being a Felon in Possession of a Firearm.

Standard of Review

Evidence must be presented on all of the elements of a criminal offense and is sufficient to support a verdict if in the light most favorable to the prosecution a rational trier of fact can find guilt beyond a reasonable doubt.¹⁹ The People accept defendant's assertion that this court reviews this claim *de novo*.

Discussion

Overview

Defendant claims that insufficient evidence was produced to support defendant's conviction of Felon in Possession of a Firearm as the burden is upon the People to prove that defendant did not have rights restored. Further this court in the grant of leave directed the parties to address whether under MCL 750.224f(2)(b) **the lack of restoration of the right to possess a firearm** is an element of the offense or an exemption or exception to which MCL 776.20 applies. The People maintain **the lack of restoration of the right to possess a firearm** is not an element

¹⁹ *People v Hampton*, 407 Mich 354,368 (1979).

of this offense so that the evidence produced at this trial was sufficient to support the verdict of guilty as defendant presented no proof that his right to possess a firearm had been restored.

No claim is made that the Legislature is prohibited from enacting a statute that places the burden upon defendant to establish the existence of a particular fact while maintaining the burden of proof for a criminal violation remains upon the People.²⁰ Defendant's claim therefore is that the Legislature in enacting MCL 750.224f made proof of **lack of restoration of the right to possess a firearm** an element of this offense.

MCL 750.224f which defines the offense of Felon in Possession of a Firearm in the following manner:

1) **Except as provided in subsection (2)**, a person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until the expiration of 3 years after all of the following circumstances exist:

(a) The person has paid all fines imposed for the violation.

(b) The person has served all terms of imprisonment imposed for the violation.

(c) The person has successfully completed all conditions of probation or parole imposed for the violation.

(2) A person convicted of a **specified felony** shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until all of the following circumstances exist:

(a) The expiration of 5 years after all of the following circumstances exist:

(i) The person has paid all fines imposed for the violation.

(ii) The person has served all terms of imprisonment imposed for the violation.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation.

²⁰ *People v Peganaue*, 447 Mich 278 (1994); MCL 768.21a.

(b) The person's right to possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm has been restored pursuant to section 4 of Act No. 372 of the Public Acts of 1927, being section 28.424 of the Michigan Compiled Laws. (Emphasis added)

In addressing defendant's claim that People have the burden of proving of **lack of restoration of the right to possess a firearm** the Court of Appeals stated the following:

In sum, the prosecution proved that defendant possessed a firearm and that he had a prior conviction of larceny from a person, a specified felony as defined by MCL 750.224f(6). In the absence of any evidence defendant's firearm rights had been restored, this evidence was sufficient to support defendant's convictions of felon in possession of a firearm and felony-firearm. MCL 750.224f(2); MCL 750.227b; *Petrella, supra*.²¹

The Court of Appeals in so ruling did not err.

To resolve defendant's claim, this court must construe the statute defining the offense of Felon in Possession of a Firearm. In addressing such questions of statutory construction, this court has stated the following in defining the role of appellate courts:

We review questions of statutory construction de novo. In doing so, our purpose is to discern and give effect to the Legislature's intent. We begin by examining the plain language of the statute; where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed--no further judicial construction is required or permitted, and the statute must be enforced as written. We must give the words of a statute their plain and ordinary meaning, and only where the statutory language is ambiguous may we look outside the statute to ascertain the Legislature's intent. (Citations omitted)²²

²¹ *People Petrella*, 424 Mich 221 (1985).

²² *People v Morey*, 461 Mich 325, 329-330 (1999).

MCL 750.224f provides that a defendant who has been convicted of a **specified felony** to possess a firearm is guilty of a felony. However, this statutory scheme provides an exception for a convicted felon to regain the ability to legally possess a firearm by meeting certain conditions as set forth above.

It is the People's position that the clear unambiguous intent which is consistent with the plain meaning of MCL 750.224f is that proof of **lack of restoration of the right to possess a firearm** is not an element of this offense but rather an exception which defendant has the burden of establishing.

Carrying a Concealed Weapon Exceptions

Before analyzing MCL 750.224f, it is necessary to examine how proof of such exceptions are required by related statutes involving the possession of firearms.

MCL 750.224f does not expressly provide whether the People or defendant has the burden of establishing defendant's exception to the criminal penalties for felon who is in possession of firearm. However, statutes are not interpreted in a vacuum but are read within the statutory scheme in which they are reenacted. Particular statutes are construed *in pari materia*, that is, in light of other statutes related to the same general.²³

Like MCL 750.224f, MCL 750.227 in part prohibits the carrying of pistols and then provides for exceptions. Specifically MCL 750.227 defines the offense of Carrying a Concealed Weapon in relation to the carrying of a pistol as follows:

²³ *People v MacPherson*, 323 Mich, 438 442 (1949); *People v Shirley Johnson*, 96 Mich App 84, 86-87 (1980).

(2) A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, *except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.*

In *People v Schrader*,²⁴ the defendants were convicted of several charges including Carrying a Concealed Weapon. At trial, the People in the case in chief proved that the defendants did not possess a license to carry a concealed weapon as of the time of trial. The court in vacating the Carrying a Concealed Weapon convictions stated the following:

It will be noted that an essential element of this statute, as regards a pistol, is '**without a license to so carry said pistol as provided by law,**' and this in turn is a matter of proof as to the lack of a license.

* * * * *

It will be noted that there is **no showing of a lack of a pistol license at the time of the alleged commission of the crime.**

* * * * *

In view of the complete failure of proof of this essential element of the crime, we hold that defendant was improperly convicted of the crime of carrying a concealed weapon and that, as a consequence, his sentence of 3 to 5 years in prison for that offense, which runs concurrently with the 15 to 30 years for robbery armed, is nugatory.²⁵ **(Emphasis added).**

²⁴ *People v Schrader*, 10 Mich App 211 (1968)

²⁵ *Id.*, at 216-217. Note: One of this defendant's co-defendants who was not involved in this appeal was convicted of Larceny from the Person and Carrying a Concealed Weapon.

The opinion in *People v Schrader* was issued on March 25, 1968. On July 1, 1968, P.A. 1968 No. 299 (MCL 776.20) was approved by the Legislature with the extraordinary measure that it should have immediate effect.

MCL 776.20 as passed by the Legislature provides as follows:

In any prosecution for the violation of any acts of the state relative to use, licensing and possession of pistols or firearms, **the burden of establishing any exception, excuse, proviso or exemption contained in any such act shall be upon the defendant** but this does not shift the burden of proof for the violation.

The enactment of P. A. 1968 No.299 negated the holding of *People v Schrader* by expressly providing that burden of establishing an exception within the Carrying a Concealed Weapon statute was upon defendant.

This Court in *People v Henderson*,²⁶ addressed the application of this statute and stated the following:

The plaintiff agrees that the statute establishes two elements of the crime, but asserts that the state is absolved from proving the lack of a license by virtue of M.C.L.A. s 776.20 M.S.A. s 28.1274(1) which reads:

'In any prosecution for the violation of any acts of the state relative to use, licensing and possession of pistols or firearms, the burden of establishing any exception, excuse, proviso or exemption contained in any such act shall be upon the defendant but this does not shift the burden of proof or the violation.'

It is true that we have heretofore regarded M.C.L.A. s 750.227; M.S.A. s 28.424, *Supra*, as defining a crime having two elements. *People v. Gould*, 384 Mich. 71, 179 N.W.2d 617 (1970); *People v. Schrader*, 10 Mich.App. 211, 159 N.W.2d 147 (1968).

On reconsideration however, we are persuaded that the

²⁶ *People v Henderson*, 391 Mich 613 616-617 (1974)

crime defined by M.C.L.A. s 750.227; M.S.A. s 28.424 as it concerns this case, has but one element. We are satisfied that the operative words of the statute as they pertain to this defendant are:

'* * * any person who shall carry a pistol * * * in any vehicle operated or occupied by him * * * shall be guilty of a felony.'

The language in the statute 'without a license to so carry said pistol as provided by law' does not add an element to the crime, but simply acknowledges that a person may be authorized so to carry a pistol. This is of the essence of a license.

A license is the permission by competent authority to do an act which, without such permission, would be illegal.

Accordingly we hold that upon a showing that a defendant has carried a pistol in a vehicle operated or occupied by him, prima facie case of violation of the statute has been made out. **Upon the establishment of such a prima facie case, the defendant has the burden of injecting the issue of license by offering some proof--not necessarily by official record--that he has been so licensed.** The people thereupon are obliged to establish the contrary beyond a reasonable doubt. (Emphasis added).

This holding mirrored the application which had been given by the Court of Appeals subsequent to the enactment of MCL 776.20.²⁷

Therefore, it is well settled by judicial interpretation that the plain expressed statutory mandate of MCL 776.20 requires that a defendant bears the burden of establishing that he qualifies for an exception to the imposition of criminal penalties for the violation of MCL 750.227.

Felon in Possession of a Firearm

In 1992, the Legislature enacted MCL 750.224f which precludes felons from possessing firearms of any sort anywhere. However, the Legislature provided for conditions upon which a

²⁷ *People v Jiminez*, 27 Mich App 633, 635 (1970); *People Gilleylen*, 31 Mich App 416 (1971); *People v Carey*, 36 Mich App 640 , 641 (1971).

felon could have his rights restored and provided for different requirements for **felonies** and **specified felonies**. In regard to a **specified felony**, the proscription will be removed when defendant has fulfilled a number of requirements, including that the Concealed Weapons board of the county in which defendant resides has restored his right to possess a firearm.²⁸ By so providing, the drafting of this statute mirrors that of the Carrying a Concealed Weapon in that a crime involving the possession of a pistol or other firearms is defined and as an exception is provided to avoid criminal liability.²⁹ Therefore, in interpreting its terms, MCL 750.224f must be read in context of MCL 776.20 which expressly applies to relates to the burden of establishing an exception upon defendant. Specifically, MCL 750.224f involves a prosecution for the violation of a statute relative to the possession of firearms. It prohibits a convicted felon from possessing any firearm anywhere. Criminal liability can be avoided only through meeting the requirements of the exception³⁰ defined within MCL 750.224f.

Indeed, some defendants have avoided conviction through the misapplication of the burden of proof relating to this statute. In *People v Weems*,³¹ the unpublished Court of Appeals decision cited by defendant (50a) is an example of such a case. However, the reasoning and holding of *People v Weems*, is inapplicable here as in that case the court had directed a verdict of acquittal on the charge of Felon in Possession of a Firearm. While the trial court decision in that

²⁸ MCL 750.224f(2)(b); MCL 28.424.

²⁹ MCL 750.224f(1).

³⁰ Both MCL 750.227 and MCL 750.224f employ the same grammatical structure, a crime is defined and an *exception* is set forth within the same statute.

³¹ *People v Steve Weems*, unpublished per curiam opinion of the Court of Appeals decided (September 23, 2004) (Docket No. 247435).

casae was clearly erroneous, the Court of Appeals was precluded from providing the People a remedy as double jeopardy bars a retrial to correct the erroneous decision of the trial court. Here, as the trial court properly place upon defendant the burden of proving that his right to possess a firearm had been restored, the double jeopardy prohibition is irrelevant and the substantive merits of this issue may be addressed.

Further, while the burden of establishing the exception in this case is governed by the application of MCL 776.20 which expressly involves a violation relative to the possession of a firearm, its rationale is consistent with this court's decision in *People v Peganaue*³² which interpreted a similar statutory scheme which placed the burden upon defendant of establishing a licensing or prescription exception related to criminal violations involving controlled substances offenses. The Legislature may expressly provide that a defendant establish an exception without violating the constitutional requirements relating to burden of proof.

Instant Case

In this case, the information charged defendant with the possession of a firearm having been previously convicted of a **specified felony**.

Here, the People established that defendant was possession of a firearm and that defendant had been convicted of a specified felony. Defendant presented no evidence that the Concealed Weapon's Board of the county in which he lived had restored his rights as is required by MCL 750.224f(2)(b). Defendant was found guilty and the Court of Appeals affirmed that conviction as defendant establish no exception from the application of the criminal liability.

³² *Peganaue, supra.*

This evidence was sufficient to support the guilty verdict and the ruling of the Court of Appeals as competent evidence was produced and found by the trial court which established proof beyond a reasonable doubt on all of the elements of the offense.

In so acting the courts applied the relevant law to the fact of this case.

The opinion of the Court of Appeals should therefore be affirmed.

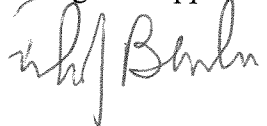
RELIEF REQUESTED

WHEREFORE, the People pray that judgment of the Court of Appeals be affirmed.

Respectfully Submitted,

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Dated: February 3, 2005

FRANK J. BERNACKI/lw